



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

[REDACTED]
Crysta T.,
Complainant,

v.

Sonny Perdue,
Secretary,
Department of Agriculture
(Agricultural Research Service),
Agency.

Appeal No. 0120151930

Hearing No. 550-2014-00211X

Agency No. ARS-2013-00571

DECISION

The Commission accepts Complainant's appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's April 10, 2015, final order concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. The Commission's review is de novo. For the following reasons, the Commission MODIFIES the final order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Research Chemist at the Agency's Pacific West Area at the University of California in Davis, California. Complainant experiences complications from hemianopia and foot deformities. The office was made up of two research groups: the Obesity Unit and the Immunity and Disease Prevention Unit. Each unit had 12 research scientists, and Complainant worked in the Immunity and Disease Prevention Unit. The research scientists were supported by support scientists who acted as laboratory managers by performing such duties as purchasing supplies, keeping inventory and

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

safety records, and supervising the students and lab volunteers. Complainant's support scientist retired in April 2012, but the Agency did not immediately hire a replacement. In March 2013, the Agency's Administrator informed employees that, due to budget cuts, it would be eliminating some vacant positions and making other reductions. Since the support scientist position which reported to Complainant was vacant, it was eliminated by the Pacific West Area Director from the staffing plan.

Promotions are granted through the Research Position Evaluation System (RPES). An outside committee reviews the applications using four factors: research assignment; supervisory controls; guidelines and originality; and contributions, impact, and stature. The panel consists of scientific peers from across the Agency. One panel member contacts an applicant's supervisor to discuss the candidate, but the supervisor is not allowed to express an opinion as to how the committee should decide. On March 27, 2013, a panel evaluated Complainant's application for a grade level promotion based upon the case writeup, the in-depth reviewer's report, the cited standards, and related Agency policies and procedures. Each panelist evaluated and scored the case prior to the meeting. After hearing the in-depth reviewer's report, followed by open discussion, the panel arrived at the consensus score and resulting classification decision. Complainant received a total point score of 40, which indicated that her current GS-14 grade was the proper grade. Complainant believes that her supervisor (S1) did not give her a good recommendation; therefore, she was rated as "retain in grade."

At various points since 1998, Complainant claims that the Agency denied her requests for reasonable accommodation. Complainant asked for two days of telework per week, but was only granted one day of telework in 2011. S1 stated that he denied Complainant's request for two days of telework because Complainant was required to oversee the work of her part-time support scientist and several graduate students, as well as a new externally-funded research grant for which she was responsible. Complainant acknowledged that supervising a series of temporary employees required more of her time than permanent employees and that this was "not a trivial problem." Nonetheless, S1 granted Complainant one day of telework, and Complainant was the only scientist who teleworked one day a week.

Complainant alleged that S1 and her second-level supervisor (S2) harassed her on several occasions by stating or implying that she was lazy or that she should quit complaining and get her work done. Complainant claimed that S1 threatened to cancel her vacation in September 2013. Complainant further alleged that she and S1 had disputes regarding her lab support needs and that S1 "scapegoated and disrespected" her regarding a research grant and criticized her unit's five-year research plan.

On July 10, 2013, Complainant filed a formal complaint alleging that the Agency discriminated against her and subjected her to a hostile work environment on the bases of sex (female), disability, and age (58) when:

1. On March 17, 2013, the Support Scientist position assigned to her was removed, which compromised her ability to meet the "Supervisory Controls" factor for her

performance evaluation under the RPES and required her to perform the duties of that position in addition to her official duties;

2. On or about April 4, 2013, she was issued a “Retaining” rating in RPES, such that her grade level promotion was denied;
3. On or about July 10, 2013, her request for reasonable accommodation was denied; and
4. Since March 17, 2013, she has been subjected to various acts of harassment, in that her supervisors have issued electronic mails and made comments implying that she was lazy and attempting to do as little work as possible.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. The AJ granted summary judgment in favor of the Agency and issued a decision without a hearing on February 19, 2015.

In the decision, the AJ determined that the Agency had articulated legitimate, nondiscriminatory reasons for its actions. With respect to claim (1), the Agency explained that the Support Scientist position that had been assigned to Complainant was not filled because of the Agency’s reduced budget following the sequestration of funds by Congress. Complainant’s organization was required to reduce its budget by over \$600,000 due to the sequestration and recession of funds by Congress. The AJ noted that Complainant acknowledged that other research scientists “had their support scientist positions delayed by the hiring freeze then closed during the sequester.” The AJ added that Complainant’s principal concerns appeared to be the manner in which existing resources had been allocated and that a scientist in the Obesity Unit had access to more than one support scientist. The AJ found that Complainant had presented no evidence rebutting the Agency’s explanation that it was within the Director’s authority to determine how the Agency’s discretionary funds would be allocated, including improving the financial position of the Obesity Unit. Similarly, the AJ determined that there was no evidence rebutting the Agency’s claim that it was embarking on a five-year plan that would result in support staff being allocated to projects where they were needed as opposed to the former practice of exclusively assigning them to individual senior scientists.

Regarding claim (2), the AJ determined that Complainant produced no evidence suggesting that the Agency panel’s evaluation of her 2013 RPES application was discriminatory. Complainant’s allegation appeared to be that S2 “lied about the facts regarding the loss of [her] support scientist.” The AJ found that even if there were facts to support this vague assertion, there was no evidence that the lack of a support scientist impacted her not reaching the GS-15 level, as Complainant’s national and international reputation and expertise were the defining factors between the GS-14 and GS-15 level.

As to claim (3), S1 stated that he denied Complainant's 2013 request to telework two days a week because her unit's work was "interactive, which is best done" in her laboratory where Complainant and her colleagues could "oversee activities by support staff in our labs and other areas." The AJ found that even assuming that Complainant intended her telework request to be a reasonable accommodation request, she failed to show how such a request would allow her to perform the essential functions of her job when such an arrangement would keep her from performing the essential function of supervising lab personnel. Complainant acknowledged that supervising temporary employees was not a trivial concern in her workplace environment. Furthermore, Complainant was the only scientist in her facility who was given the opportunity to telework on a regular basis for any reason.

Finally, as to Complainant's harassment claim, that AJ determined that the alleged incidents were insufficiently severe or pervasive to establish a hostile work environment. The AJ added that no reasonable person could view Complainant's disputes with S1 about resource allocation estimates as creating an abusive or intimidating environment. Similarly, the feedback and directions from Complainant's superiors to her about job-related matters such as her work on the five-year plan or the need to complete work before leave is taken when on deadline were routine supervisory actions. The AJ further found that there was no evidence that the alleged incidents were based on discriminatory animus.

The AJ concluded that Complainant failed to show that the Agency's reasons for its actions were pretextual. As a result, the AJ found that Complainant had not been subjected to discrimination or a hostile work environment as alleged. The Agency subsequently issued a final order fully implementing the AJ's decision. The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that the AJ made important errors in her case and failed to consider the evidence in the light most favorable to her. Complainant claims that she showed that Agency officials' statements were untrue. Further, Complainant alleges that the Agency ignored her request for reasonable accommodation. Complainant argues that she showed that the Agency treated her less favorably than other employees who did not have a disability. Accordingly, Complainant requests that the Commission reverse the final order. The Agency submitted a brief in opposition to Complainant's appeal in which it urged the Commission to affirm the AJ's decision and its final order.

ANALYSIS AND FINDINGS

The Commission's regulations allow an AJ to grant summary judgment when he or she finds that there is no genuine issue of material fact. 29 C.F.R. § 1614.109(g). An issue of fact is "genuine" if the evidence is such that a reasonable fact finder could find in favor of the non-moving party. Celotex v. Catrett, 477 U.S. 317, 322-23 (1986); Oliver v. Digital Equip. Corp., 846 F.2d 103, 105 (1st Cir. 1988). A fact is "material" if it has the potential to affect the outcome of the case.

Order to Show Cause

As a preliminary matter, the Commission notes that in a letter dated May 28, 2015, the Commission notified the Agency that Complainant had filed the instant appeal and that the Agency must submit the complaint file to the Commission within 30 calendar days of receiving the letter. Additionally, the May 28, 2015, letter advised the Agency that failure to submit the entire complaint file within the specified time frame could result in the Commission drawing an adverse inference. The Agency failed to submit the requested complaint file within the required time frame.

On February 24, 2017, the Commission issued a notice to show cause why sanctions should not be issued against the Agency for failing to submit the complete complaint file. The Agency was notified that if it failed to submit the entire record in 20 days or show good cause why it could not do so, the Commission could issue a decision in favor of Complainant or take such other action as appropriate. The Agency again failed to timely submit the requested complaint file or otherwise show cause why it could not do so. The Agency subsequently submitted the complete complaint file on May 4, 2017, with no accompanying explanation for its delay.

The Commission's regulations are perfectly clear with respect to the Agency's obligation to submit the complete record and to do so in a timely manner. "The agency must submit the complaint file to the [Commission] within 30 days of initial notification that the complainant has filed an appeal." 29 C.F.R. § 1614.403(e). Compliance with this timeframe is not optional. Further, "[a]gencies should develop internal procedures that will ensure the prompt submission of complaint files upon . . . notice that a complainant has filed an appeal." Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Ch. 9, § IV.G (Aug. 5, 2015). The Agency's tardiness undermined the integrity and effectiveness of the EEO process. As a result, the Commission determines that the imposition of sanctions is warranted.

Sanctions serve a dual purpose. On the one hand, they aim to deter the underlying conduct of the non-complying party and prevent similar misconduct in the future. Barbour v. U.S. Postal Serv., EEOC Appeal No. 07A30133 (June 16, 2005). On the other hand, they are corrective and provide equitable remedies to the opposing party. Given these dual purposes, sanctions must be tailored to each situation by applying the least severe sanction necessary to respond to a party's failure to show good cause for its actions and to equitably remedy the opposing party. Royal v. Dep't of Veterans Affairs, EEOC Request No. 0520080052 (Sept. 25, 2009). Several factors are considered in tailoring a sanction and determining if a particular sanction is warranted: (1) the extent and nature of the non-compliance, and the justification presented by the non-complying party; (2) the prejudicial effect of the non-compliance on the opposing party; (3) the consequences resulting from the delay in justice; and (4) the effect on the integrity of the EEO process. Gray v. Dep't of Def., EEOC Appeal No. 07A50030 (Mar. 1, 2007).

The Commission notes that the Agency's repeated and continued failure to timely comply with the entirety of the 29 C.F.R. Part 1614 regulations is inexplicable and inexcusable. The

Commission's regulations require agency action in a timely manner at many points in the EEO process. Compliance with these timeframes is not optional, and as the Commission stated in Royal v. Dep't of Veterans Affairs, *supra*, "the Commission has the inherent power to protect its administrative process from abuse by either party and must insure that agencies, as well as complainants, abide by its regulations." The Commission further noted that when weighing the factors pertinent to tailoring an appropriate sanction, the effect on the integrity of the EEO process, and protecting that process, is of "paramount" importance to the "Commission's ability to carry out its charge of eradicating discrimination in the federal sector."

Based on the specific circumstances of this case, the Commission finds that the most appropriate sanction to address the Agency's conduct is to order the Agency to: (1) post a notice at its Office of Adjudication in Washington, D.C. regarding its failure to comply with the Commission's regulatory timeframes and orders; (2) provide training to its EEO personnel who failed to comply with the Commission's regulatory timeframes and orders; and (3) consider taking disciplinary action against these EEO personnel. The Commission's decision to sanction the Agency in this matter will effectively emphasize to the Agency the need to comply with Commission orders in a timely manner. The Agency should consider itself on notice that future noncompliance with our regulations could subject it to the imposition of more stringent sanctions. *See Talahongva-Adams v. Dep't of the Interior*, EEOC Appeal No. 0120081694 (May 28, 2010).

Hostile Work Environment

Turning to the merits of the instant case, to establish a claim of harassment a complainant must show that: (1) she belongs to a statutorily protected class; (2) she was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on her statutorily protected class; (4) the harassment affected a term or condition of employment and/or had the purpose or effect of unreasonably interfering with the work environment and/or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. *See Henson v. City of Dundee*, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been "sufficiently severe or pervasive to alter the conditions of [complainant's] employment and create an abusive working environment." *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993).

Therefore, to prove her harassment claim, Complainant must establish that she was subjected to conduct that was either so severe or so pervasive that a "reasonable person" in Complainant's position would have found the conduct to be hostile or abusive. Complainant must also prove that the conduct was taken because of her protected classes. Only if Complainant establishes both of those elements, hostility and motive, will the question of Agency liability present itself.

The Commission agrees with the AJ that, construing the evidence in the light most favorable to Complainant, the alleged incidents were not sufficiently severe or pervasive to establish a hostile work environment. Even assuming that the alleged conduct was sufficiently severe or pervasive to create a hostile work environment, Complainant failed to show that the Agency's actions were based on discriminatory animus.

The record reflects that the alleged incidents were more likely the result of routine supervision and general workplace disputes and tribulations. For example, as to claim (1), the Director stated that Complainant's Support Scientist had retired and, because of budget cuts associated with sequestration and rescissions, he determined that it was necessary to abolish any vacant position in the research unit to maintain an acceptable level of operating funds. ROI, at 72. As a result, during the Fiscal Year 2013 resource management planning process, management removed Complainant's Support Scientist position. *Id.* S1 and S2 added that the abolishment of the Support Scientist position would not have affected her RPES review and she was not required to perform additional duties other than such tasks as ordering supplies or working on the chemical inventory in her lab for a short time. *Id.* at 55, 66. S2 stated that Complainant has now been provided with assistance for "lab duties" from two Support Scientists. *Id.* at 66. S2 clarified that "Supervisory Controls" refers to what supervisory controls Complainant was under, not who she supervised. *Id.* at 66.

Regarding claim (2), S1 affirmed that Complainant received a "remain in grade" RPES evaluation, which was the most common outcome for scientists. ROI, at 56. S1 noted that he was prohibited from making specific recommendations about the decision to be made, and simply answered questions from the RPES panel member about the impact of Complainant's research and her role in conducting the research. *Id.* S2 confirmed that it is difficult to rise to a GS-15 because it required evidence of both national and international recognition, stature, and impact. *Id.* at 66. The panel considered Complainant's application and concluded in its Research Position Evaluation Report that Complainant met "Level D" in each factor; however, she did not yet reach "Level E." *Id.* at 136-39. Accordingly, the panel determined that Complainant's position was properly classified at the GS-14 level. *Id.*

Finally, with regard to her claim that her supervisors made comments implying she was lazy or attempting to do as little work as possible, S1 denied making any such comments. S1 stated that Complainant objected to her unit receiving some criticism during the process of developing the office's five-year research proposals. ROI, at 56. S1 stated that he simply expressed his view as her supervisor that the quality and quantity of the proposed research could be improved and that she needed to do more work on developing her research protocol. *Id.*

Construing the evidence in the light most favorable to Complainant, the Commission agrees with the AJ that Complainant has not shown she was subjected to a hostile work environment. Moreover, to the extent Complainant claims that she was subjected to disparate treatment, the Commission finds that Complainant has not proffered any evidence from which a reasonable fact finder could conclude that the Agency's explanation was pretext for discrimination. As a result, the Commission finds no basis to disturb the AJ's summary judgment decision finding that Complainant was not subjected to discrimination or a hostile work environment as alleged.

Denial of Reasonable Accommodation

The Rehabilitation Act of 1973 prohibits discrimination against qualified disabled individuals. See 29 C.F.R. § 1630. In order to establish that the Agency denied Complainant a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) she is a qualified individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide a reasonable accommodation. See Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, EEOC No. 915.002 (Oct. 17, 2002) (“Enforcement Guidance”). Under the Commission's regulations, an agency is required to make reasonable accommodation to the known physical and mental limitations of a qualified individual with a disability unless the agency can show that accommodation would cause an undue hardship. See 29 C.F.R. §§ 1630.2(o) and (p). The Commission will assume without deciding (for the purposes of this decision) that Complainant is a qualified individual with a disability.

Here, Complainant states that she experiences complications from having a club foot and weak ankles and being pigeon-toed. Complainant further contends that she cannot see from the left side of each eye, has no binocular vision, and only 30 percent field of vision. Additionally, Complainant states she has mild speech issues, asthma, and chronic bronchitis. ROI, at 45. Complainant alleges that the Agency has denied her at least two days of telework a week as a reasonable accommodation dating back to 1998. Complainant claims that Agency management approved her request in 2011, but for just one day of telework per week. Id. at 48. The record indicates that Complainant requested to telework one to two days a week in 1999, but the request was initially denied by the then-Director. Id. at 272. Nonetheless, Complainant teleworked one to two days a week without approval and without being disciplined. Id.

In 2004, Complainant submitted a request for three to four days of telework. ROI, at 268-69. Complainant noted that she already worked from home on a regular basis, but that the request was related to her difficulty in “moving from building to building” at the University of California due to her vision loss. Complainant cited the number of bikes and bikers on campus and several times where she was almost run over by bikers. Additionally, Complainant noted the smog and pollen in Davis, California. S2 informed Complainant that her request for additional telework was denied because she would not be able to perform all of her essential duties while teleworking, including adequate supervision of technician and graduate students and acting as Lead Scientist for her Current Research Information System project and collaborating with other scientists. Id. at 272-73. In addition, S2 noted that the office would be moving to a new building on the edge of campus and would be remote from bicycles. Id. S2 offered Complainant one day of telework or to search for other vacant positions for which she was qualified for reassignment. Id. There is no evidence in the record showing that Complainant responded to the Agency’s offer, and she continued to telework one day per week.

In July 2013, Complainant requested an additional day of telework. ROI, at 303. S1 responded that Complainant needed to oversee activities by support staff in the labs and other areas of the Center. Id. S1 indicated that he would continue to approve one day of telework, but not two. Id. Additionally, S1 affirmed that he has allowed Complainant to work from home as needed due to illness, interruption of her public transportation, and other similar circumstances. Id. at 60.

The Commission finds that Complainant has not established that the Agency failed to provide her with a reasonable accommodation. Here, Complainant requested at least two days per week of telework, while management granted her one day of telework and additional days as needed. The Commission notes that the protected individual is entitled to a reasonable accommodation; she is not necessarily entitled to the accommodation of choice. See Castaneda v. U.S. Postal Serv., EEOC Appeal No. 01931005 (Feb. 17, 1994). The employer may choose among reasonable accommodations so long as the chosen accommodation is effective. U.S. Airways v. Barnett, 533 U.S. 391, 400 (2002). Complainant has presented no evidence that the provided accommodation was ineffective. Accordingly, the Commission finds that Complainant failed to prove that the Agency denied her reasonable accommodation in violation of the Rehabilitation Act.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, the Commission AFFIRMS the Agency's finding of no discrimination. The Agency's final order, however, is MODIFIED in accordance with this decision and the ORDER below.

ORDER

Unless otherwise indicated, the Agency is ordered to complete the following remedial actions within sixty (60) days of the date this decision is issued:

1. The Agency shall post a notice in accordance with the paragraph below.
2. The Agency shall provide training to the EEO management officials regarding their responsibilities concerning case processing under 29 C.F.R. Part 1614.
3. The Agency shall consider taking appropriate disciplinary action against the management officials responsible for case processing under 29 C.F.R. Part 1614. The Commission does not consider training to be disciplinary action. The Agency shall report its decision to the Compliance Officer. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of the responsible management officials have left the Agency's employ, the agency shall furnish documentation-of their departure date(s).

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

POSTING ORDER (G1016)

The Agency is ordered to post at its Office of Adjudication facility located in Washington, D.C. copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer at the address cited in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0610)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0416)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision or **within twenty (20) calendar days** of receipt of another party's timely request for reconsideration. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. The requests may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or

department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

May 17, 2017

Date